

JUDGE CASTEL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
GALBRAITH & PAUL, INC.,

07**07****07****07**

X

:

Plaintiff, : Civil Action No.

v.

:

COMPLAINT

RUBY TUESDAY, INC.,

:

(JURY DEMANDED)
U.S.D.C. S.D.N.Y.
CASHIERS

Defendant. :

X

Plaintiff Galbraith & Paul, Inc., by its attorneys, for its Complaint against Defendant Ruby Tuesday, Inc., alleges as follows:

SUMMARY OF ACTION

1. Plaintiff Galbraith & Paul, Inc., has valid, registered copyright rights in its well-known "Donuts" design for fabric. Defendant Ruby Tuesday, Inc., has recently appropriated, without permission and for its own benefit, a reproduction of the "Donuts" design on lamp shades for its multi-store restaurant chain renovation. Defendant's violation of Plaintiff's copyright rights requires an imposition of copyright damages and an injunction against such continued violation.

JURISDICTION AND VENUE

2. This complaint alleges causes of action for copyright infringement under the Copyright Laws of the United States, 17 U.S.C. §101 et seq.

3. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §1331.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-

(d) and 1400(a).

THE PARTIES

5. Plaintiff Galbraith & Paul, Inc. (hereinafter "Plaintiff" or "G&P") is a corporation organized and existing under the laws of the State of Pennsylvania.

6. G&P is a well known designer of original textile products which are sold throughout the United States and the world. G&P conducts a significant amount of its business in this judicial district.

7. Upon information and belief, Defendant Ruby Tuesday, Inc. (hereinafter "Ruby Tuesday") is a Tennessee corporation with its headquarters located at 150 West Church Avenue, Maryville, Tennessee 37801.

8. Upon information and belief, Defendant Ruby Tuesday is a restaurant chain with locations that it operates throughout the United States, including restaurants in New York City, New York.

9. Upon information and belief, Defendant Ruby Tuesday operates at least one restaurant in this judicial district.

10. Upon information and belief, Defendant Ruby Tuesday has conducted business and otherwise operates in this judicial district.

COUNT I
(COPYRIGHT INFRINGEMENT BY COPYING FABRIC)

11. This cause of action arises under the Copyright Laws of the United States, Title 17 United States Code, Sec. 101 et seq.

12. One of G&P's most popular designs is a design that G&P identifies as

"Donuts" (hereinafter "G&P's Donuts design"). G&P's Donuts design has achieved significant notoriety in the trade and among the public. A copy of the Donuts design is attached hereto as **Exhibit A**.

13. G&P's Donuts design consists of material which is wholly original and is copyrightable subject matter under the Copyright Laws of the United States, 17 U.S.C. Sec. 101, et seq.

14. G&P has previously duly complied with the provisions of the Copyright Laws of the United States, and has secured rights and privileges in and to its Donuts design, and has duly obtained from the Register of Copyrights a Certificate of Registration pertaining to said design, identified as, Donuts, Copyright Registration VA 1-161-824. A copy of said issued Certificate of Copyright Registration is attached hereto as **Exhibit B**.

15. All copies of G&P's Donuts design have been sold and/or used in conformity with the provisions of the Copyright Laws of the United States.

16. Upon information and belief, Defendant Ruby Tuesday obtained fabric carrying G&P's Donuts design from a source carrying G&P's products

17. Upon information and belief, Defendant Ruby Tuesday having full knowledge of the copyright rights of G&P in the Donuts design as alleged herein, has infringed the aforesaid copyright of G&P by copying, or causing to be copied, lamp shades taken from G&P's Donuts design. A photograph of one example of such a lamp shade used by Defendant Ruby Tuesday is attached hereto as **Exhibit C**.

18. All of the acts of Defendant Ruby Tuesday as set forth in the preceding

paragraph, were undertaken without the permission, license, or consent of G&P, and are irreparably damaging G&P. Defendant Ruby Tuesday has been notified of Plaintiff's rights, but has failed to cease its infringing activities.

19. Upon information and belief, the activities of Defendant Ruby Tuesday have diminished and will continue to diminish the inherent value and marketability of G&P's Donuts design.

20. G&P has been damaged by the acts of the Defendant as alleged in this Court, in an amount as yet unknown, but if continued will be in excess of \$1,000,00.00.

COUNT II

(COPYRIGHT INFRINGEMENT)

BY ADVERTISING COPIES OF PLAINTIFF'S FABRIC)

21. This cause of action arises under the Copyright Laws of the United States Title 17 United States Code Sec. 101 et seq.

22. The allegations of paragraphs 11 to 20 hereof are repeated as if set forth in full herein.

23. Upon information and belief, Defendant Ruby Tuesday having full knowledge of the copyright rights of G&P in the Donuts design as alleged herein, has infringed the aforesaid copyright of G&P by displaying, promoting and/or advertising the lamp shades copied from G&P's Donuts design. A photograph of one example of such advertisement by Defendant Ruby Tuesday is attached hereto as **Exhibit D**.

24. All of the acts of Defendant Ruby Tuesday as set forth in the preceding paragraph, were undertaken without the permission, license, or consent of G&P, and are irreparably damaging G&P. Defendant Ruby Tuesday has been notified of Plaintiff's rights, but has failed to cease its infringing activities.

25. Upon information and belief, the activities of Defendant Ruby Tuesday have diminished and will continue to diminish the inherent value and marketability of G&P's Donuts design.

26. G&P has been damaged by the acts of the Defendant Rub Tuesday as alleged in this Court, in an amount as yet unknown, but if continued will be in excess of \$1,000,00.00.

COUNT III

(TRADEMARK INFRINGEMENT)

27. This cause of action arises under the Trademark Laws of the United States, Title 15 United States Code, Sec. 1051 et seq.

28. As noted above, one of G&P's most popular designs is a design that G&P identifies as "Donuts" (hereinafter "G&P's Donuts design"). G&P's Donuts design has achieved significant notoriety and can be considered G&P's "signature" design.

29. Upon information and belief, customers or potential customers familiar with G&P's Donuts design, viewing the copies thereof at Defendant Ruby Tuesday's restaurants or promoted in Ruby Tuesday's advertisements will believe that such usage has been authorized or licensed or permitted by Plaintiff, whereas the same is not true.

30. Said acts of Ruby Tuesday constitute a false designation of origin in violation of 15 U.S.C. Sec.1125. Upon information and belief, such actual or potential customers of G&P and G&P's design will tend to believe that G&P has gone "downstream" to mass-merchandising, harming G&P's high quality reputation and denigrating its design integrity.

31. All of the acts of Defendant Ruby Tuesday as set forth in the preceding paragraph, were undertaken without the permission, license, or consent of G&P, and are irreparably damaging G&P. Defendant Ruby Tuesday has been notified of Plaintiff's rights, but has failed to cease its infringing activities.

32. Upon information and belief, the activities of Defendant Ruby Tuesday have diminished and will continue to diminish the inherent value and marketability of G&P's Donuts design.

33. G&P has been damaged by the acts of the Defendant Ruby Tuesday as alleged in this Court, in an amount as yet unknown, but if continued will be in excess of \$1,000,00.00.

WHEREFORE, Plaintiff demands:

A. That Defendant, its agents, servants, related companies, and all parties in privity with them, or any one of them, be enjoined preliminarily and permanently from infringing the copyright of Plaintiff either by advertising, displaying, or using fabric that is substantially similar to Plaintiff's Donuts design;

B. That Defendant be required to deliver up to be impounded during the pendency of this action all infringing copies of Plaintiff's said copyrighted Donuts design in the possession or under the control of said Defendant.

C. That Defendant be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendant's willful infringement of Plaintiff's copyrights.

D. That Defendant pay to Plaintiff the costs of this action and Plaintiff's reasonable attorneys' fees, as the Court may allow Plaintiff.

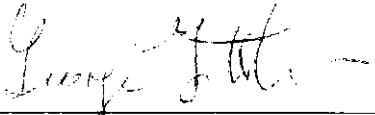
E. That Plaintiff has such other and further relief as the Court may deem just.

JURY DEMAND

Plaintiff demands a trial by jury.

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Plaintiff
270 Madison Avenue, 8th Floor
New York, New York 10016-0601
(212) 684-3900

By:


George Gottlieb (GG 5761)
Marc P. Misthal (MM 6636)

Dated: New York, New York
November 20, 2007

EXHIBIT A

Galbraith & Paul

Lighting + Textiles

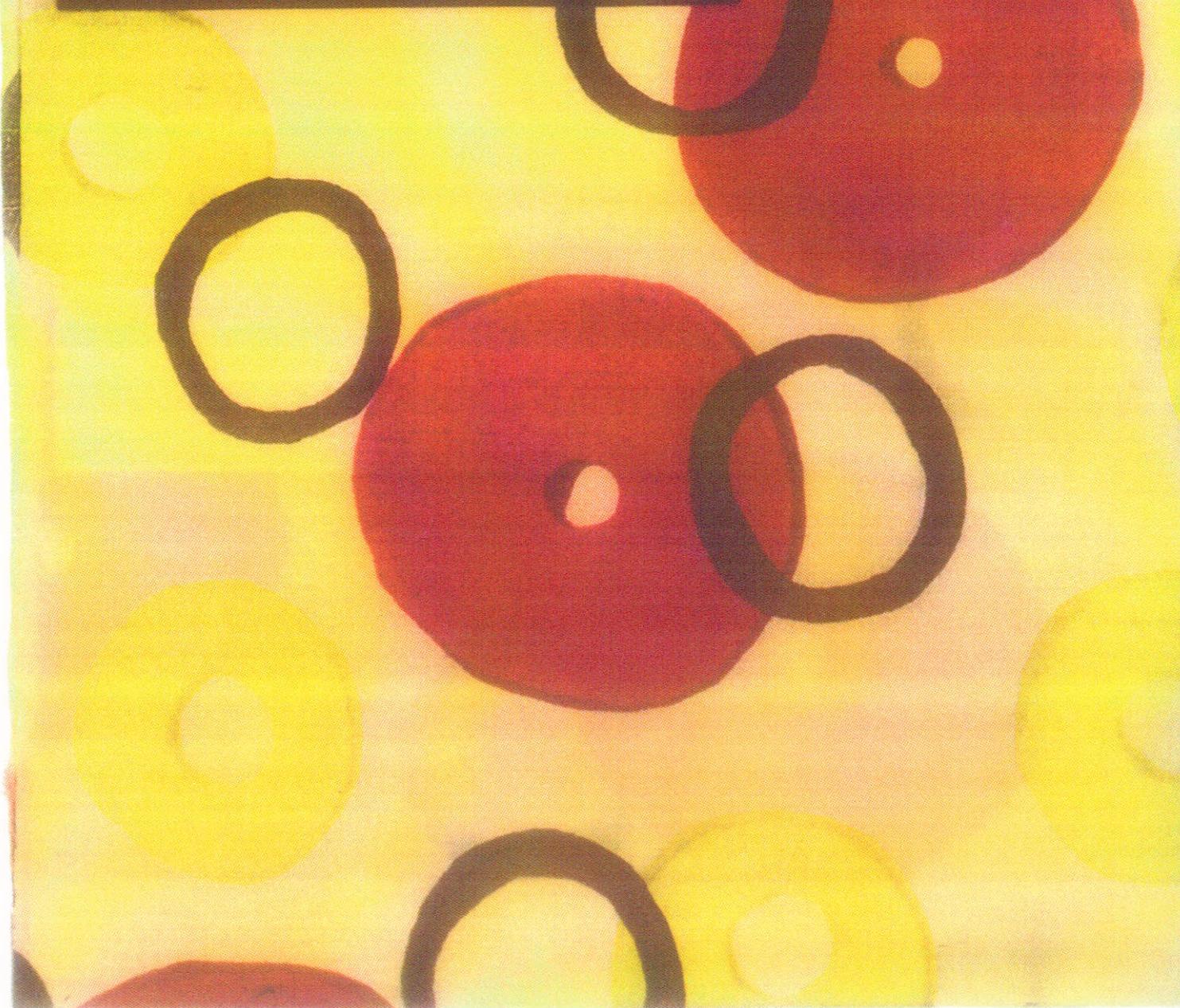


EXHIBIT B

EXAMINED BY *MJ*

FORM VA

CHECKED BY *MJ*

CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

5**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
 a. This is the first published edition of a work previously registered in unpublished form.
 b. This is the first application submitted by this author as copyright claimant.
 c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

6**DERIVATIVE WORK OR COMPILATION** Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.a. **Precexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

a See instructions
before completing
this space.

bb. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼**7****DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**a****b****CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address Apt/City/State/ZIP ▼

Ephraim Paul 116 Shars Lane, Phila., PA 19127
Galbraith & Paul

Area code and daytime telephone number (215) 524-0420

Fax number (215) 524-0476

Email

8**CERTIFICATION*** I the undersigned, hereby certify that I am the

check only one ► { author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of *Galbraith & Paul Inc.* *Ephraim Paul*
Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

*Ephraim Paul, Treasurer*Date *9/3/02*

Handwritten signature (X) ▼

*X Ephraim Paul***9****Certificate
will be
mailed in
window
envelope
to this
address:**

Name *Galbraith & Paul*
 Number/Street/Apt ▼ *116 Shars Ln.*
 City/State/ZIP ▼ *Phila., PA 19127*

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL ELEMENTS
IN THE SAME PACKAGE**

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, or call (202) 707-3000.

*17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

EXHIBIT C

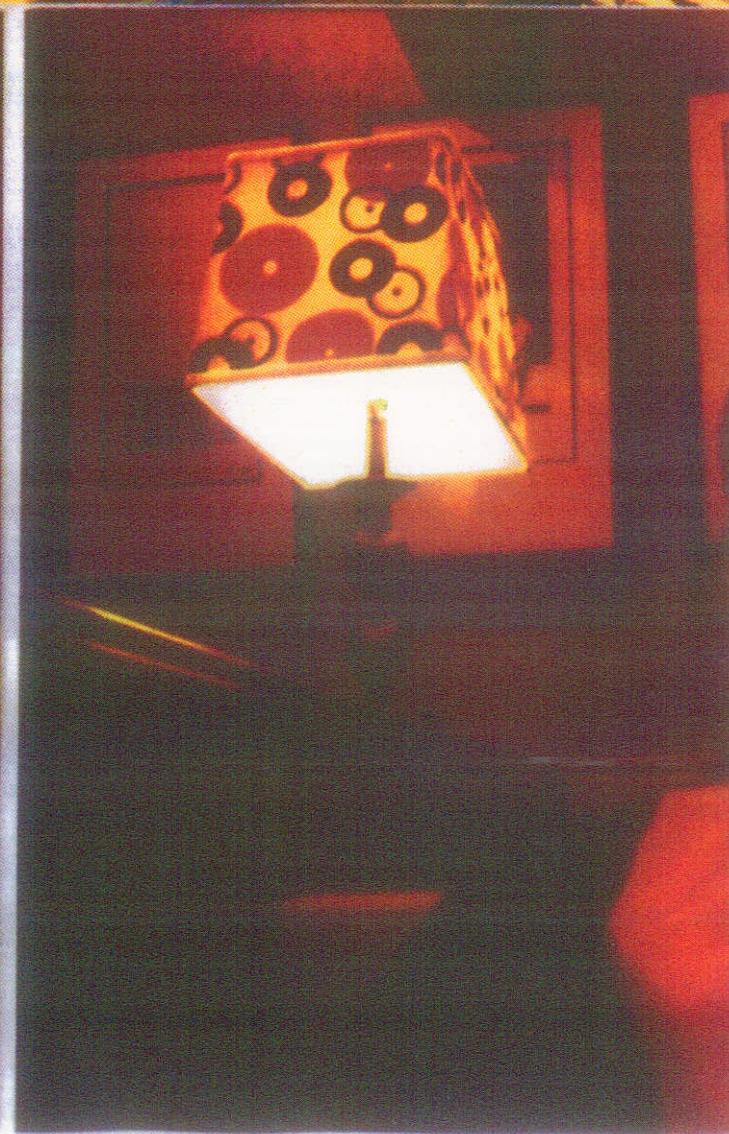
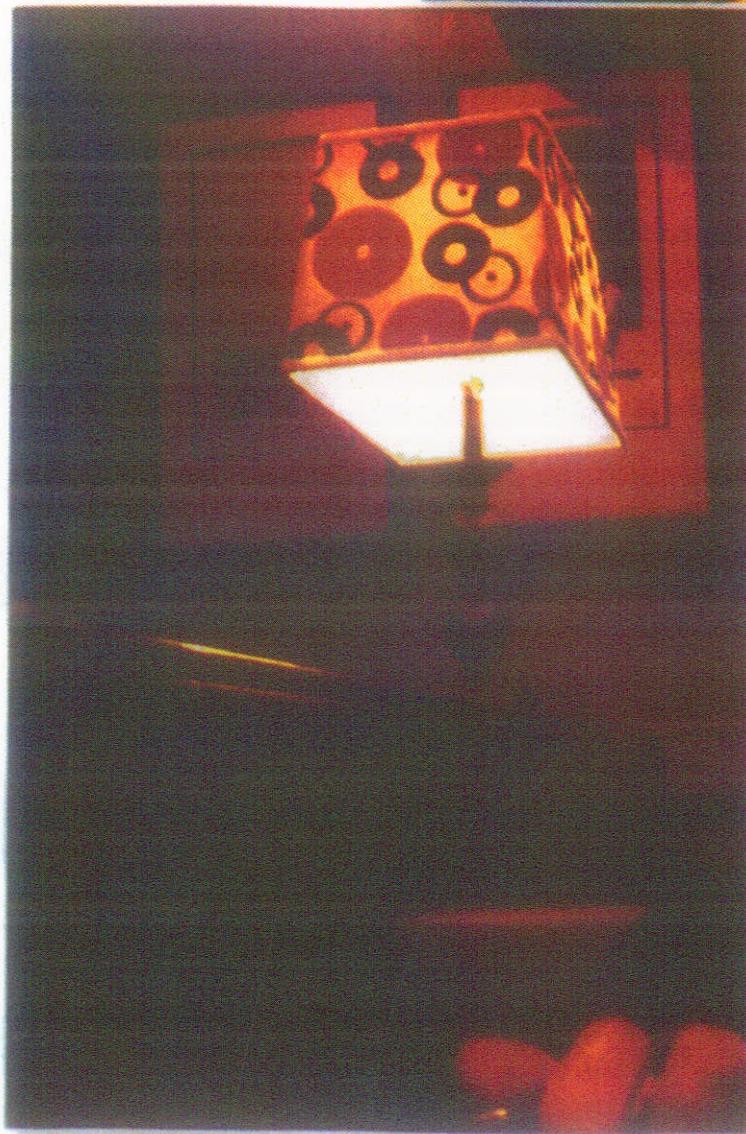
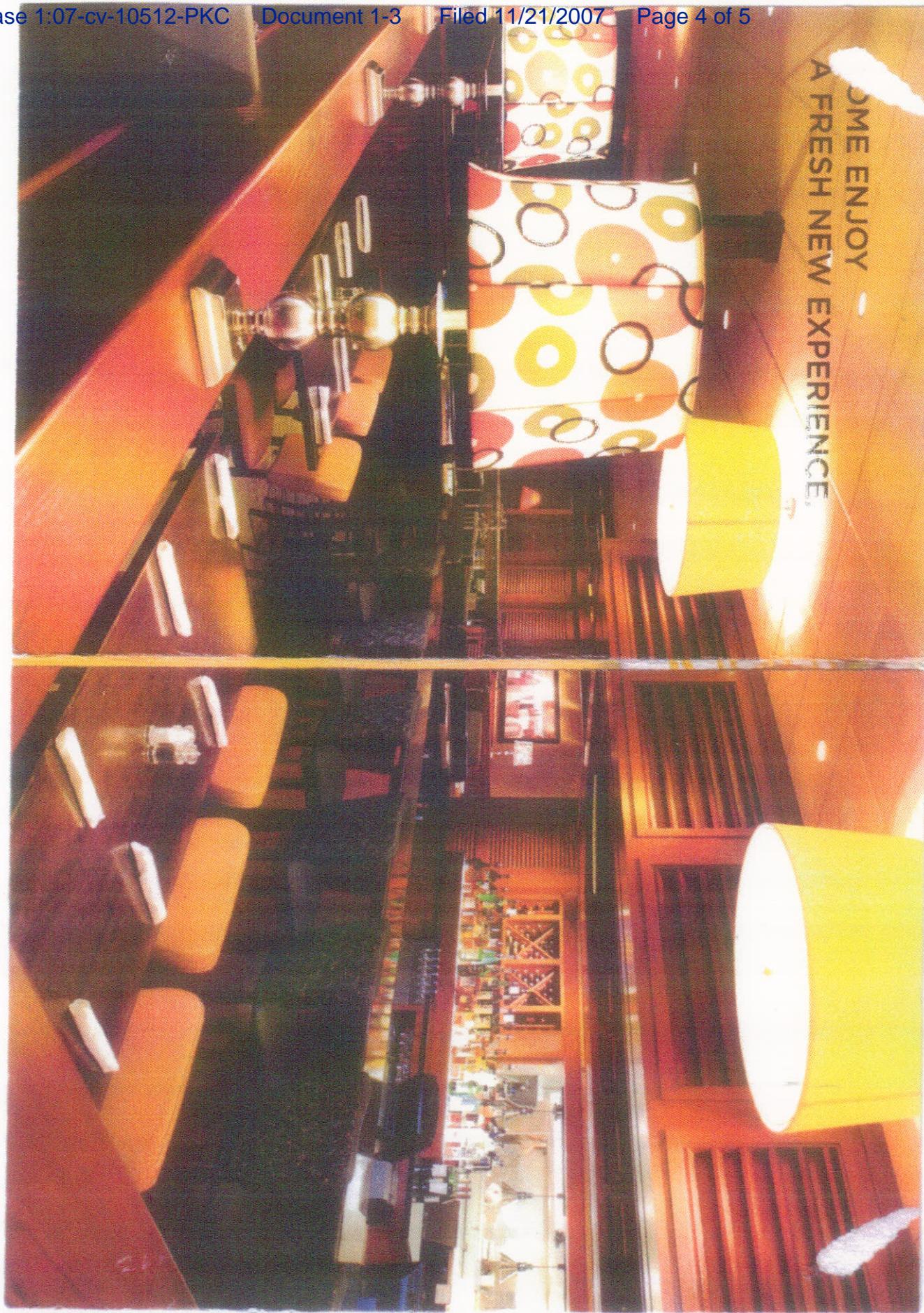


EXHIBIT D



A collage of images for Ruby Tuesday. At the top right, a Jumbo Lump Crab Cake is shown with a side of fries. To its left is a Premium Aged Prime Sirloin steak with a side of broccoli. Below these are two photographs of people: one of a man and woman at a table, and another of a woman in a pink dress smiling. The bottom left contains a block of text.

Premium Aged
Prime Sirloin

Jumbo Lump
Crab Cake

www.rubytuesday.com

Enjoy everything from fresh ingredients & fresh recipes to good times & gracious hospitality.